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March 16, 2009

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petitioners' Alternative Rulemaking Proposal
CC Docket No. 96-128

Dear Ms. Dortch:

On March 13, 2009, the undersigned, representing petitioners Martha Wright, *et al.* ("Petitioners"), met with Marcus Maher, Associate Bureau Chief, and Randy Clarke, Legal Counsel to the Bureau Chief, Wireline Competition Bureau, and Albert Lewis, Chief of the Pricing Policy Division, to discuss Petitioners' Alternative Rulemaking Proposal in the above-captioned docket ("Proposal").¹ Petitioners' counsel discussed the issues raised by the Proposal and responded to questions from Messrs. Maher, Clarke and Lewis. Counsel noted the excessiveness of inmate long distance rates relative to any credible measure of costs and that the inmate calling service providers' cost study largely supported Petitioners' requested benchmarks.

¹ Petitioners' Alternative Rulemaking Proposal, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128 (Mar. 1, 2007) ("Proposal"); FCC Public Notice, *Comment Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services*, 22 FCC Rcd 4229 (WCB 2007).

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The views expressed in the meeting tracked the positions set forth in Petitioners' filings in this proceeding as well as the discussion in the attached talking points, which were distributed at the meeting.

In accordance with Section 1.1206(b)(1) of the Commission's rules, this letter and attachment are submitted for inclusion in the record of the above-captioned docket. Please do not hesitate to contact the undersigned with any questions or concerns about this letter or the issues discussed.

Very truly yours,

/s/ Frank W. Krogh
Frank W. Krogh

Counsel to Petitioners

Attachment

cc: Marcus Maher
Randy Clarke
Albert Lewis

INMATE TELEPHONE SERVICE TALKING POINTS

- **Inmate Telephone Rates Still Exorbitant.** In spite of reform efforts in some states, interstate inmate telephone service rates remain extortionate in most jails and prisons. The highest inmate rates are for interstate collect calling, which are as much as \$3.95 per call plus \$0.89 per minute. Many prisons permit no alternatives to collect calling. The burden of exorbitant inmate collect calling rates falls on innocent families, not prisoners.
- **There Is Consensus For Reform.** The gathering consensus for effective relief is reflected in reports, recommendations and studies by a national prison commission, the ABA, NARUC, corrections officials and penological experts. The growing trend in outsourcing incarceration to private entities in distant states, precluding family visits, has aggravated the disruptive effects of unreasonable interstate inmate calling rates. Rate relief also would reduce the incentive to use contraband cell phones in prison.
- **Competitive Bidding For Service Contracts Increases Rates.** The market failure in inmate calling partly results from the practice of requiring successful bidders for exclusive prison calling service contracts to pay commissions, amounting to as much as 65 percent of gross revenues. Competitive bidding generates increased commission payments, which, the FCC points out, “perversely” results in higher service rates. *Inmate Payphone Order*, 17 FCC Rcd 3248, 3253 (2002).
- **Judicial Referral To FCC.** Inmate telephone service competition and rates issues raised in *Wright v. Corrections Corp. of America*, a prisoners’ rights class action, were referred to the FCC in 2001. After extensive FCC mediation efforts, the *Wright* plaintiffs filed a Petition for Rulemaking in 2003 requesting the FCC to require that private prison facilities permit competition in the provision of interstate long distance inmate calling services.
- **Proposed Benchmarks And Debit Calling Option Would Lower Rates.** The *Wright* petitioners filed an Alternative Rulemaking Proposal in 2007 requesting that the FCC: (1) establish interstate long distance inmate benchmark rates of \$0.20 per minute for debit calling service and \$0.25 per minute for collect calling service, for prisoners in all facilities, public and private, with no per-call charges; and (2) require that inmate calling service providers offer debit calling as an option to collect calling.
- **Service Providers’ Cost Study Confirms Generosity Of Proposed Benchmarks.** Petitioners demonstrated that comparable long distance services, including a representative sample of prison inmate calling services, are now provided at rates, net of commission payments, lower than the requested benchmarks.
 - The cost study submitted by the service providers on August 15, 2008 focused exclusively on unprofitable “marginal” locations, which tend to be jails and other small correctional facilities. In spite of this skewed sample, the results were largely consistent with Petitioners’ requested benchmarks.
 - *For a 12-minute interstate debit call, the 25 location sample used in the service providers’ cost study yields a cost of \$0.19 per minute, which is under the requested*

debit calling benchmark rate. For a 15-minute interstate collect call, the cost study yields a cost under \$0.24 per minute, which is less than the requested collect calling benchmark rate.

- Thus, even at most jails and other small local correctional facilities, interstate calling could be profitably provided under the proposed benchmarks.
- The service providers argue that small facilities are more costly to serve. Given the results of their cost study, which addressed service to the highest-cost facilities, it can be concluded that large, high-volume correctional locations, which originate most interstate inmate calls and are less costly to serve, could profitably be served at rates substantially *lower than* the requested benchmarks.
- ***Commissions Constitute Profits, Not Costs.*** Because the FCC has found that service providers' commission payments constitute "profits," and are "not a cost," comparable inmate calling rates should be calculated net of commissions. *Inmate Payphone Order*, 17 FCC Rcd at 3255, 3262.
- **If Benchmarks Include Per-Call Charges, An Inmate Should Be Permitted To Reinitiate Disconnected Call To Same Number With No Additional Per-Call Charge.** If the Commission concludes that benchmarks should be set as a combination of per-call and usage charges, such charges should generate no more revenue than the requested benchmark per-minute rates for an interstate inmate call of average length. Also, any per-call charge should be waived automatically for a call reinitiated by the same prisoner to the same number within two minutes of the end of the previous call, in order to ameliorate the problem of improperly disconnected calls.
- **If The Commission Imposes Prepaid Calling, Rather Than Debit Calling, As A Required Service Option, Safeguards Must Be Imposed.** If the Commission decides not to require debit calling as an option to collect calling, but instead requires prepaid calling as a service option, with prepaid accounts set up by the parties receiving inmate calls, such calls should be subject to the benchmark rate for debit calling, and additional safeguards should be imposed.
 - The only additional service charges or fees that should be permitted with prepaid calling are third-party fees for payment processing options chosen by the customer, and customers must be allowed to pay by credit card via Internet or check. Required minimum payments to set up prepaid accounts must be no greater than \$25.
 - Service providers should be required to inform prisoners of the prepaid option and how to establish an account so that called parties do not have to contact service providers repeatedly to set up the accounts.
 - The called party setting up the account should be automatically notified at the beginning of each call how much time remains in the account and should be able to access, by means of touch tones, the amount remaining at any time, at no charge.